even though the purchaser defaults. *Alt* v. *Doscher* (1905) 102 App. Div. 344, 92 N. Y. Supp. 439. The ordinary obligation of a broker may of course be changed by a special agreement. See *Parker* v. *Walker* (1888) 86 Tenn. 566, 568-69, 8 S. W. 391. Then recovery may be had only upon compliance with the terms of such contract. *Barber* v. *Hildebrand* (1894) 42 Neb. 400, 60 N. W. 594. Thus, when the principal's satisfaction with the proposed vendee is a condition precedent to the payment of the commission, the broker cannot recover unless his principal is satisfied. *Walker* v. *Tirrell* (1869) 101 Mass. 257. If, however, the principal releases the buyer from his contract before the happening of the condition precedent and without the latter's default, the broker is entitled to his commission. *Littell & Sons* v. *Schwartz* (N. Y. 1920) 192 App. Div. 353, 182 N. Y. Supp. 638. But if, as in the instant case, the principal cancels the contract because of any fault of the purchaser, the broker cannot recover. *Seymour* v. *St. Luke's Hospital* (1898) 28 App. Div. 119, 50 N. Y. Supp. 989; *contra, Pinkerton* v. *Hudson* (1908) 87 Ark. 506, 113 S. W. 35.

CONSTITUTIONAL LAW—FORFEITURE OF PERSONAL PROPERTY—TRIAL BY JURY.—The defendant's automobile was declared forfeit by the trial court under a statute which provided that vehicles used in the illegal transportation of liquor should be forfeited without a jury trial. On appeal, *held,* this statutory denial of a trial by jury was unconstitutional. *Keeter* v. *State* (Okla. 1921) 198 Pac. 866.

The right of trial by jury secured by the state constitutions is the right to such a trial as existed at common law when these constitutions were adopted. *Flint River Steamboat Company* v. *Foster* (1848) 5 Ga. 194; *Byers and Davis* v. Commonwealth (1862) 42 Pa. St. 89. The abatement of public nuisances without judicial process, being well known to the common law, is now a constitutional exercise of the police power. *Coe* v. *Schultz* (N. Y. 1866) 2 Abb. Prac. (N. S.) 193; *Mullen & Co.* v. *Mosely* (1907) 13 Idaho 457, 90 Pac. 986; *Harvey* v. *De Woody* (1856) 18 Ark. 252; *Lawton* v. *Steele* (1894) 152 U. S. 133, 14 Sup. Ct. 499. *A fortiori* if a hearing is granted, it does not follow that a jury trial must be allowed. *Kirkland* v. *State* (1904) 72 Ark. 171, 78 S. W. 770. Moreover, these are cases within the jurisdiction of equity and there are no jury trials in equity. *Luria* v. *United States* (1913) 231 U. S. 9, 34 Sup. Ct. 10; *Mugler* v. *Kansas* (1887) 123 U. S. 623, 88 Sup. Ct. 273; *Littleton* v. *Fritz* (1885) 65 Iowa 488, 22 N. W. 641. The right of summary abatement at common law and under the police power is restricted, however, to property which is usually used solely for illegal purposes. See *Lawton* v. *Steele, supra.* It does not include the seizure of property ordinarily used for lawful purposes, where at least a hearing is necessary. *McConnell* v. *McKillip* (1904) 71 Neb. 712, 99 N. W. 505; *City of Chicago* v. *Stock Yards Co.* (1896) 164 Ill. 224, 45 N. E. 430. Nor does it apply where an issue of fact as to the unlawful use may be joined. *Greene* v. *James* (1854) 2 Curt. C. C. 187. And if the scope of a statute permits unreasonable seizures, as by making no provision for judicial condemnation, it is void. *Lowry* v. *Rainwater* (1879) 70 Mo. 152. And if the property seized under a statute with no provision for a jury trial can be used for legal purposes, as for example a vessel, the statute is void as not within the police power of the State. *Colon* v. *Lisk* (1897) 153 N. Y. 188, 47 N. E. 302. The instant case is, therefore, sound.

CONSTITUTIONAL LAW—REFERENDUM—REVIEW OF LEGISLATIVE DISCRETION.—The legislature, under a constitutional clause providing for a referendum on all laws except those necessary for the immediate preservation of the public peace, health, and safety, passed an enactment which it declared to be of the type not subject to the referendum. In an action to compel a referendum, *held,* three judges dis-

senting, that the legislative declaration is subject to judicial review. *State ex rel. Pollock* v. *Becker* (Mo. 1921) 233 S. W. 641.

Some jurisdictions hold that a legislative determination that a law is a necessary emergency measure is subject to judicial review. *State ex rel. Brislawn* v. *Meath* (1915) 84 Wash. 302, 147 Pac. 11; see *State ex rel. Westhues* v. *Sullivan* (1920) 283 Mo. 547, 576, 224 S. W. 327. Others declare the legislative finding conclusive. *Kadderly* v. *Portland* (1903) 44 Ore. 118, 74 Pac. 710; *State ex rel. Larin* v. *Bacon* 14 S. Dak. 394, 85 N. W. 605. Should the courts review acts of a coördinate department of government done in the exercise of a discretionary power vested in it by the constitution? The executive determination of the existence of an emergency which necessitates the calling out of the militia is conclusive. *Martin* v. *Mott* (U. S. 1827) 12 Wheat. 19. The recognition of a foreign government being discretionary with the executive department is not subject to judicial review. *Oetjen* v. *Central Leather Co.* (1918) 246 U. S. 297, 38 Sup. Ct. 309. The propriety of legislation under the "elastic" clause being discretionary with Congress is not judicially reviewable. *First National Bank* v. *Union Trust Co.* (1917) 244 U. S. 416, 37 Sup. Ct. 734. However, where the legislature is given discretion under the police power, the courts will look into the substance of the matter to see if the legislature has transcended its constitutional authority. See *Mugler* v. *Kansas* (1887) 123 U. S. 623, 661, 8 Sup. Ct. 273. It has been said that to allow the legislature to be the sole judge as to the existence of an emergency could render the referendum nugatory. See *State ex rel. Westhues* v. *Sullivan, supra,* 586. It seems that the court would reach a sounder conclusion both in governmental theory and as a matter of practical policy in refusing to review the legislature's exercise of discretionary powers. For the courts to reverse a finding of fact by a coördinate body of government appears a usurpation of power. Moreover, the legislature being more closely in touch with political situations should be better able to decide whether an emergency exists.

CONSTITUTIONAL LAW—TAXATION OF STOCK EXCHANGE SEAT—JURISDICTION.—The plaintiff, who was domiciled in Ohio, was the owner of a seat on the New York Stock Exchange. Ohio imposed a property tax upon it. *Held,* Justices Holmes, Van DeVanter, and McReynolds, dissenting, the tax is valid. *Anderson* v. *Durr* (1921) 42 Sup. Ct. 15.

Membership in an exchange, notwithstanding limitations upon its use, is property, and subject to taxation. *Rogers* v. *Hennepin County* (1916) 240 U. S. 184, 36 Sup. Ct. 265; *State* v. *McPhail* (1914) 124 Minn. 398, 145 N. W. 108; *contra, San Francisco* v. *Anderson* (1894) 103 Cal. 69, 36 Pac. 1034. Nothing in the federal Constitution prevents its taxation. *Rogers* v. *Hennepin County, supra.* But unlike ordinary property it cannot be reached by levy or attachment. *Pancoast* v. *Gowen* (1879) 93 Pa. St. 66. However, it passes to the trustee in bankruptcy. *Page* v. *Edmunds* (1903) 187 U. S. 596, 23 Sup. Ct. 200. Whether it is included among the property to be taxed under the state statutes, is a matter of local law. *Rogers* v. *Hennepin County, supra.* Assuming that a "seat" is property, the next question would be the situs for taxation. A state cannot tax the tangible property of its citizens when it is permanently located in another jurisdiction. *Union Transit Co.* v. *Kentucky* (1905) 199 U. S. 194, 26 Sup. Ct. 36. But it can tax tangible property which though physically outside the owner's domicile, has not acquired a situs for taxation elsewhere. *Southern Pacific Co.* v. *Kentucky* (1911) 222 U. S. 63, 32 Sup. Ct. 13. Intangible propery is taxable at the domicile of the owner. *Hawley* v. *Malden* (1914) 232 U. S. 1, 34 Sup. Ct. 201. This is true even though it is also taxable in another state by virtue of having acquired a busines situs there. *Columbia Trust Co.* v. *Louisville* (1917)